

1 Peter R Afrasiabi (SBN 193336)  
2 [pafrasiabi@onellp.com](mailto:pafrasiabi@onellp.com)  
3 Deepali A. Brahmbhatt (SBN 255646)  
4 [dbrahmbhatt@onellp.com](mailto:dbrahmbhatt@onellp.com)  
5 ONE LLP  
6 4000 MacArthur Blvd., East Tower, Suite 500  
7 Newport Beach, CA 92660  
8 Telephone: (949) 502-2870  
9 Direct: (650) 600-1298  
10 Facsimile: (949) 258-5081  
11 John E. Lord (SBN 216111)  
12 [jlord@onellp.com](mailto:jlord@onellp.com)  
13 ONE LLP  
14 9301 Wilshire Blvd., Penthouse Suite  
15 Beverly Hills, CA 90210  
16 Telephone: (310) 866-5157  
17 Facsimile: (310) 943-2085  
18  
19 Attorneys for Plaintiff  
20 C.W., a minor and through his Guardian,  
21 REBECCA WHITE, on behalf of himself  
22 and all others similarly situated

Matthew J. Adler (SBN 273147)  
Matthew.Adler@faegredrinker.com  
FAEGRE DRINKER BIDDLE & REATH LLP  
Four Embarcadero Center, 27th Floor  
San Francisco, California 94111-4180  
Telephone: 415-591-7500  
Facsimile: 415-591-7510  
Jeffrey S. Jacobson (*pro hac vice*)  
[Jeffrey.Jacobson@faegredrinker.com](mailto:Jeffrey.Jacobson@faegredrinker.com)  
FAEGRE DRINKER BIDDLE & REATH LLP  
1177 Avenue of the Americas, 41st Floor  
New York, New York 10036-2714  
Telephone: 212-248-3140

10 Attorneys for Defendant  
11 EPIC GAMES, INC.

12  
13 **UNITED STATES DISTRICT COURT**  
14  
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 C.W., a minor, by and through his  
17 Guardian, REBECCA WHITE, on behalf  
18 of himself and all others similarly situated.,

19 Plaintiff,

20 vs.

21 EPIC GAMES, INC., a North Carolina  
22 corporation,

23 Defendant.

24 Case No. 4:19cv3629-YGR

25  
26 **JOINT DISCOVERY LETTER BRIEF  
27 REGARDING DEFENDANT'S  
28 DISCOVERY RESPONSES**

29 Plaintiff C.W., by and through his Guardian, Rebecca White (“Plaintiffs”), and Defendant  
30 Epic Games, Inc. (“Defendant” or “Epic Games”) submit this joint discovery letter brief pertaining  
31 to Defendant’s discovery responses. The parties met and conferred in person and could not reach a  
32 resolution. Exhibit A and B are excerpts of the disputed discovery requests.

33  
34 // /

35  
36

1       **I. PLAINTIFF'S STATEMENT – DEFICIENT DISCOVERY RESPONSES**

2       Plaintiff filed this action on June 21, 2019 and served its First Requests for Production of  
 3       Documents and Interrogatories on September 26, 2019. To date, after numerous meet and confers,  
 4       Defendant has not produced a single document and has not substantively responded to a single  
 5       interrogatory. Defendant's basis for a blanket objection to all discovery appears to be based on its  
 6       contention that this case boils down to disaffirmation, and nothing else. This argument fails  
 7       especially since the Court's ruling rejected it. First, this case involves much more than a  
 8       disaffirmation of a contract by a minor. Broadly, the case encompasses Defendant's framework  
 9       and mode of operating its video game platform targeted especially towards minors. Plaintiff has  
 10       alleged six causes of action spanning from CLRA, UCL, negligent misrepresentation, good faith  
 11       and fair dealing and unjust enrichment. For disaffirmation, the Court held "there exists an actual  
 12       controversy between the parties over the rights of minors to disaffirm in-App purchases and, if the  
 13       contracts can be disaffirmed, whether minors are entitled to refunds." (ECF 54 at 19.)

14       Second, Defendant classifies all discovery as targeted towards the class and, in its view, this  
 15       case involves a single Plaintiff. Yet, even for the investigation conducted by Defendant regarding  
 16       Plaintiff, Defendant ignores the Court's rulings on these issues and objects to any discovery related  
 17       to "in-App purchases" or "refunds" by asserting that it is "*wholly unnecessary task, in that*  
 18       *Plaintiff's claims relate only to purported disaffirmation of contracts – not requests for refunds.*"  
 19       (e.g., Response to ROG. 3-4.) Defendant even objects to the term "Digital Content" as ambiguous,  
 20       despite Plaintiff's clarifying that Digital Content is Content sold in the Fortnite video game. To  
 21       streamline only key issues for the Court's review, Plaintiff moves to compel responses to ROGs 1,  
 22       2, 3, 5 and 8 and RFPs 4, 19 and 20. The Court's ruling should also apply to any other discovery  
 23       requests where the Defendant has made the same duplicative objections.

24       Third, Defendant may argue it has produced some documents, but it has only done so very  
 25       selectively to further its own interests by producing documents about C.W.'s use from October  
 26       2018, while such documents are non-responsive to Plaintiff's request. Defendant, a sophisticated  
 27       multi-billion dollar private company with an inexhaustible litigation budget, deep pockets and  
 28

1       **I. PLAINTIFF'S STATEMENT – DEFICIENT DISCOVERY RESPONSES**

2       Plaintiff filed this action on June 21, 2019, and served its First Requests for Production of  
 3       Documents and Interrogatories on September 26, 2019. To date, after numerous meet and confers,  
 4       Defendant has not produced a single document and has not substantively responded to a single  
 5       interrogatory. Defendant's basis for a blanket objection to all discovery appears to be based on its  
 6       contention that this case boils down to disaffirmation, and nothing else. This argument fails  
 7       especially since the Court's ruling rejected it. First, this case involves much more than a  
 8       disaffirmation of a contract by a minor. Broadly, the case encompasses Defendant's framework  
 9       and mode of operating its video game platform targeted especially towards minors. Plaintiff has  
 10       alleged six causes of action spanning from CLRA, UCL, negligent misrepresentation, good faith  
 11       and fair dealing and unjust enrichment. For disaffirmation, the Court held "there exists an actual  
 12       controversy between the parties over the rights of minors to disaffirm in-App purchases and, if the  
 13       contracts can be disaffirmed, whether minors are entitled to refunds." (ECF 54 at 19.)

14       Second, Defendant classifies all discovery as targeted towards the class and, in its view, this  
 15       case involves a single Plaintiff. Yet, even for the investigation conducted by Defendant regarding  
 16       Plaintiff, Defendant ignores the Court's rulings on these issues and objects to any discovery related  
 17       to "in-App purchases" or "refunds" by asserting that it is "*wholly unnecessary task, in that*  
 18       *Plaintiff's claims relate only to purported disaffirmation of contracts – not requests for refunds.*"  
 19       (e.g., Response to ROG. 3-4.) Defendant even objects to the term "Digital Content" as ambiguous,  
 20       despite Plaintiff's clarifying that Digital Content is Content sold in the Fortnite video game. To  
 21       streamline only key issues for the Court's review, Plaintiff moves to compel responses to ROGs 1,  
 22       2, 3, 5 and 8 and RFPs 4, 19 and 20. The Court's ruling should also apply to any other discovery  
 23       requests where the Defendant has made the same duplicative objections.

24       Third, Defendant has shared some information, but it has only done so very selectively to  
 25       further its own interests by producing documents about C.W.'s use from October 2018, while such  
 26       documents are non-responsive to Plaintiff's request. Defendant, a sophisticated multi-billion dollar  
 27       private company with an inexhaustible litigation budget, deep pockets and resources, claims  
 28

1 producing this minimal discovery, required hours of investigation, over a period of weeks, by a  
 2 senior Epic Games employee that required Herculean effort.

3       Fourth, Defendant objects to nearly every request based on relevancy, under its own  
 4 unilateral definition, including ignoring explicit language in the Operative Complaint (ECF 56) and  
 5 the Court's ruling (ECF 54). For example, Plaintiff seeks discovery on Defendant's refund policy.  
 6 Defendant objects on relevance by stating "*the refund policy is specified in the EULA. Moreover,*  
 7 *Plaintiff did not request any refund, making this subject irrelevant.*" Plaintiff also seeks discovery  
 8 regarding the marketing of in-App purchases to minors. Defendant objects on relevance arguing  
 9 that it did not act, create or design policies or marketing as such specifically for Plaintiff and  
 10 though it may be targeting minors, as a group category, it need not respond. Such discovery goes to  
 11 the heart of this class action. Defendant also refuses to disclose whether there is any tracking as to  
 12 the age of its users and any lack of precautions thereof. Defendant also refuses to produce any  
 13 sales information, hiding under an umbrella of V-Bucks as a virtual currency and different third-  
 14 party vendors refuses to produce sales information

15       By stonewalling discovery, Defendant unfairly prejudices Plaintiff's ability to prosecute his  
 16 claims and prepare for the case for the class. Lastly, Defendant's objection to all discovery under  
 17 the guise that a class is not certified is meritless when the Court has a broad discretion. *Vinole v.*  
 18 *Countrywide Home Loans, Inc.*, 571 F.3d 935, 942 (9th Cir. 2009). *See also Magic Link Garment*  
 19 *Ltd. v. ThirdLove, Inc.*, No. 418CV7366PJHKAW, 2019 WL 5419515, at \*3 (N.D. Cal. Oct. 23,  
 20 2019) (allowing overall discovery on platform/framework as well as sales).

21       At the Motion hearing held on October 1, 2019, Defendant's verbal request to stay  
 22 discovery was rejected ("But the point is I would ask that Your Honor keep discovery stayed until  
 23 we get the case properly venued.") The Court denied the stay of discovery request. Further, the  
 24 Court ruled in Plaintiff's favor regarding disaffirmance. (ECF 54 at 19, 33.) Plaintiff objects to  
 25 Epic's Ex. C as violating Section 8(b) of Your Honor's Standing Order. Epic fails to acknowledge  
 26 that Fortnite accounts were hacked and C.W.'s friends playing from his house would have same IP  
 27 Address. Plaintiff is in compliance with Court Order. Hence, finding no middle ground, Plaintiff  
 28 respectfully requests the Court to compel discovery from Defendant.

## 1       II.    DEFENDANT'S STATEMENT

2           Epic Games has provided discovery, but it has properly objected to the requests at issue. The  
 3 letter attached as Ex. C demonstrates that Plaintiffs' characterizations above are incorrect.

4           Interrogatories. Plaintiffs' Interrogatory No. 1 seeks information about "each Epic Games  
 5 User in the United States." The Court ruled orally on October 1, 2019, that Epic Games does not  
 6 have to respond to this overbroad and irrelevant request. That ruling applied equally to Interrogatory  
 7 No. 2, which seeks more information regarding every user "identified in response to . . . No. 1."

8           The other interrogatories at issue also seek information that is not relevant to Plaintiffs'  
 9 claims. This case began as a dispute over whether Plaintiff C.W. can "disaffirm" in-game purchases  
 10 he supposedly made from Epic Games with his "own money," without his parents' knowledge.  
 11 Recently, however, Plaintiffs admitted that C.W. made no such purchases from Epic Games. The  
 12 case thus has morphed into a dispute over whether C.W. can disaffirm purchases he made using his  
 13 parent's payment accounts, to which his parent gave him access, and other purchases C.W. made  
 14 using non-parties' non-cash gift cards on those non-parties' marketplaces. Epic Games asserts that  
 15 C.W. has no valid claims anymore, and, accordingly, it has moved to dismiss all claims (Dkt. 59).

16           Nowhere above do Plaintiffs attempt to explain why their current claims should afford them  
 17 broad discovery into "projections, estimates, and actual data for . . . [all] In-App Purchases; the "type  
 18 of newly created Digital Content for sale and associated designations as allegedly consumable"  
 19 (whatever that means); "packaging with bundles or discounts offered"; "costs associated with the  
 20 creating [sic] such in-App Purchases"; and "in-App Purchases finalized and revenues collected."  
 21 These myriad sub-parts fall within Interrogatory No. 3 alone. Interrogatory No. 5 is equally  
 22 irrelevant, as it asks Epic Games to "[d]escribe in detail the process for verifying the identity of the  
 23 Epic Games User playing [Fortnite], including any tracking of the user's gaming habits" (again with  
 24 no explanation of what this means), as well as the user's "in-App purchases, refund requests," and  
 25 responses to refund requests. Finally, Interrogatory No. 8 seeks "the total number of software  
 26 licenses sold" (with no definition of "software licenses," which are not at issue), along with the "sales  
 27 price," "gross revenue," and other information about these undefined "software licenses." These  
 28 interrogatories simply fail to satisfy Rule 26(b)(1)'s baseline requirement of relevance.

1        **Requests for Production (“RFP”).** Plaintiffs’ RFPs are equally irrelevant. RFP No. 4 seeks  
 2 “[a]ll documents that refer or relate to comments [and] complaints” about a purported and undefined  
 3 Epic Games “non-refundable policy” that does not exist. The *Fortnite* End User License Agreement  
 4 (“EULA”) states that “[a]ll purchases...are final and not refundable...except as otherwise required  
 5 by applicable law.” *See* Dkt. No. 21-1 ¶ 4; *see also id.* ¶ 10 (“Except to the extent required by law,  
 6 all payments and fees are non-refundable ....”). This is not a “non-refundable policy,” and Epic  
 7 Games does not believe any documents exist—other than the pleadings in this case—reflecting any  
 8 minor’s attempt to invoke rights under Cal. Family Code § 6710 or similar statutes under any state’s  
 9 laws. Even C.W. himself did not communicate with Epic Games about disaffirmation before suing.

10        RFP No. 19 seeks “[a]ll Documents to show Epic Games users who have exceeded three  
 11 refund requests for the lifetime of their account.” Epic Games does not dispute that some players  
 12 have requested and received three ordinary refunds, but C.W. has not made a single ordinary refund  
 13 request. Plaintiffs’ lawsuit seeks only disaffirmation under § 6710. Finally, RFP No. 20 seeks “[a]ll  
 14 Documents to show all frequency [sic] of offering new Digital Content for in-App Purchases and  
 15 frequency at which that becomes stale by newer offerings.” To the extent this incoherent RFP ever  
 16 had saliency, it no longer does, as the Court dismissed all of Plaintiffs’ fraud-based claims and  
 17 Plaintiffs’ amendments have failed to cure any of the deficiencies the Court found in those claims.

18        This Court regularly denies discovery requests that exceed the scope of a party’s claims, and  
 19 it should do so here. *See, e.g., Travelers Indemnity Co. of Conn. v. Premier Organics, Inc.*, No. 17-  
 20 cv-302-YGR, 2017 WL 4355043, at \*4 (N.D. Cal. Sept. 29, 2017). Plaintiffs’ citation to *Magic Link*,  
 21 2019 WL 5419515, at \*3, does not help them. There, a magistrate judge held that a plaintiff had to  
 22 produce documents relating to its production capacity because that plaintiff was seeking lost profits  
 23 as part of its claim. *Magic Link* does not support Plaintiffs’ request for information that is beyond  
 24 the scope of their claims about alleged disaffirmation rights.

25        If Plaintiffs serve narrowly-tailored discovery that is relevant to their actual claims in their  
 26 First Amended Complaint, Epic Games will respond to such discovery appropriately. The Court,  
 27 however, should not compel responses to any of the irrelevant and burdensome discovery that  
 28 Plaintiffs have put at issue in this submission.

1 Dated: March 27, 2020

**ONE LLP**

2  
3 By: /s/Deepali A. Brahmbhatt  
4 Peter R. Afrasiabi  
5 Deepali A. Brahmbhatt  
John E. Lord

6 Attorneys for Plaintiff C.W. by and through his  
7 Guardian White.

8 By: /s/Jeffrey S. Jacobson  
9 Jeffrey S. Jacobson (pro hac vice)  
10 Ryan M. Salzman  
Matthew J. Adler  
11 Attorneys for Defendant Epic Games, Inc.

12 **ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1**

13 I, Deepali A. Brahmbhatt, attest that all signatories listed, and on whose behalf the filing  
14 is submitted, concur in the filing's content and have authorized the filing.

16 By: /s/Deepali A. Brahmbhatt  
17 Deepali A. Brahmbhatt  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28